

**STATEMENT OF
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BEFORE THE SENATE AVIATION SUBCOMMITTEE

**“The Foreign Aircraft Repair Station Safety Act”
May 7, 1998**

My name is Edward Wytkind. I am the Executive Director of the Transportation Trades Department, AFL-CIO whose 30 affiliated unions represent several million workers employed in all sectors of our nation's transportation system including several hundred thousand in the aviation industry.¹ With me today is Arthur Luby, General Counsel for the Transport Workers Union, who will join with me in answering any questions Members of the Committee may have.

I want to thank Chairman Gorton for holding this hearing on the problems that unsafe foreign repair stations pose for our aviation system and for giving transportation labor this opportunity to share our concerns and experience in this area. I also want to thank the Ranking Member, Senator Wendell Ford, who along with his colleague Senator Arlen Specter, have introduced The Foreign Aircraft Repair Station Safety Act, S. 1089, which will bring some common sense back to the way the Federal Aviation Administration (FAA) certifies and regulates foreign repair stations.²

As this Committee begins to draft FAA reauthorization legislation, I know that one of your main goals is to write a bill that will make air travel safer and more secure.

¹A complete list of our affiliates is attached. Specifically TTD represents the following aviation unions: Air Line Pilots Association, the Association of Flight Attendants, the International Association of Machinists and Aerospace Workers, the International Brotherhood of Teamsters, the National Air Traffic Controllers Association, the Professional Airways Systems Specialists, and the Transport Workers Union of America.

²Identical legislation, H.R. 145, has been introduced in the House by Reps. Robert Borski (D-PA), Christopher Shays (R-CT), and Phil English (R-PA). This bill was a subject of hearing last October and has already received 164 cosponsors.

Needless to say, transportation labor wholeheartedly agrees with this objective and we have been very active in developing and advancing policies that will contribute to the cause of aviation safety. S. 1089 is one of those key measures which we feel must be adopted as part of this effort and we urge this Committee to include Senator Specter's and Ford's bill in its FAA reauthorization legislation.

It has long been our position that Federal Aviation Regulation Part 145 (FAR 145), as amended in 1988, allows unnecessary and possibly substandard foreign repair stations to get certified by the FAA.³ This is an unacceptable situation. U.S. registered aircraft must be maintained at the highest level of safety and it is simply unfair to ask U.S. mechanics to compete against workers overseas who do not have to meet the same safety and training requirements and who typically do not face alcohol and drug testing mandates. The legislation we are here to discuss will address these problems and I note that it has already received the support of our nation's two biggest carriers, American and United airlines.⁴

Pre-1988 Version of FAR 145

In order for an aircraft repair station, both in this country and abroad, to work on a U.S. registered aircraft, it must be certified by the FAA. FAR 145 governs the certification of foreign and domestic repair stations and sets the standards and criteria to be used to determine whether a station should be certified. Foreign stations have been eligible for FAA certification since 1949 and before the 1988 changes were instituted the purpose of the regulations was to award "foreign repair station certificates for facilities located outside the United States where the Administrator found that ... such agencies are needed for the maintenance, alternation, and repair of United States aircraft operated outside the United States."⁵

Essentially, this means that before 1988, in order for a foreign repair station to get certified, it had to demonstrate there was a legitimate need to service aircraft involved in international travel. Consistent with this restriction, once certified, a station could only work on aircraft that were actually engaged in international operations. For example, a station located in Paris, France or Frankfurt, Germany could meet the purpose requirements of the FAA regulations since either station could easily demonstrate that there was a need to service U.S. registered aircraft that were at those locations because they were involved in international travel. As such, these regulations allowed enough foreign stations to get certified in the right locations to support our network of international flights.

³On a number of occasions the TTD Executive Committee has voiced its strong support for legislation that will address the concerns raised by the 1988 amendments to FAR 145. Attached at II is a policy resolution adopted by TTD's Executive Committee calling on Congress to pass S. 1089.

⁴Attached at III a and b are letters of support from these two airlines.

⁵14 FR 623 (February 11, 1949).

By limiting the number of foreign stations to those that actually were needed to service the international aviation sector, the pre-1988 version of FAR 145 ensured that FAA resources were not wasted certifying and inspecting unnecessary stations. This limited certification program also ensured, to the extent possible, that U.S. registered aircraft were repaired at stations meeting the highest safety standards and requirements.

There were some important exceptions to the above stated rule. First, a U.S. registered aircraft could always be repaired by a foreign facility in an emergency situation. As an organization that represents pilots and flight attendants, we obviously support this exception as we have a vested interest in ensuring that an aircraft only operates if it is safe to do so. Second, an air carrier could always apply for an exception to the limitations imposed by FAR 145 so that it could get certain work performed by foreign repair stations. The FAA routinely granted exemptions to carriers who operated foreign manufactured aircraft and had limited access to qualified repair and overhaul facilities in the United States and, indeed, the agency historically did not apply the restrictions in FAR 145 to Original Equipment Manufacturers supporting their products. These exceptions, combined with the inherent flexibility of pre-1988 FAR 145, represented a good balance between the need of carriers to get some repair work done overseas and the desire of the FAA to preserve aviation safety.

The 1988 Changes

On November 22, 1988, the FAA made two changes to FAR 145 that upset this balance and changed the very nature of the work that foreign repair stations are allowed to perform. First, the FAA amended Section 145.71 to remove the requirement that a foreign station had to demonstrate that it was necessary for “maintaining or altering United States registered aircraft outside the United States.” Second, 145.73 was amended to expand the scope of work that foreign stations are allowed to engage in. This change deleted the limitation that a foreign station could work only on aircraft that were used in operations conducted wholly or partly outside the United States. These two sections, as amended, work together: 145.71 now allows a station to get certified without demonstrating any need to service U.S. aircraft in international travel and 145.73 allows repair and maintenance work to be done on any U.S. aircraft.

The Effects of the 1988 Changes on Aviation Safety

The practical effects of these changes are predictable.⁶ Aviation safety and jobs are being threatened as foreign stations have dramatically increased their

⁶It is significant that the FAA received 3,808 comments in opposition to the proposed rule change to FAR 145. 53 Fed. Reg. 47362, 47363 (November 22, 1988). The FAA chose not to make any changes to its proposal based on these comments.

numbers by taking advantage of the FAA's new attitude – if you build a station, we will certify it. When the FAA opened up the floodgates, most of the stations that applied and received a certificate did so for the sole reason of attracting U.S. business and not to support international air commerce. Stations in Costa Rica, Brazil and Mexico have used FAR 145 to receive FAA certification even though there is little likelihood that the location of these stations will become hubs of international travel. Instead of hoping to work on aircraft engaged exclusively or partly in international travel, these stations want to work on U.S. registered aircraft that would normally never leave this country.

For example, before 1988, a foreign station could set up shop in Paris to work on aircraft that flies between Paris and New York. But now, a station can open up in Mexico to work on an aircraft that flies between Paris and New York or Washington, D.C. and Chicago. This is bad aviation policy, compromises aviation safety and threatens high-skill American jobs.

The problem is that as the number of foreign stations have increased to an unprecedented degree, the quality of the work being done is becoming a serious concern. The fact is, and nobody can honestly disagree with this statement, foreign stations operate under a different set of standards than U.S. stations adhere to. Some of these differences result from discrepancies in the regulations and some can be attributed to the fact that foreign stations, from a practical standpoint, simply do not operate under the same inspection, surveillance and general safety standards as U.S. facilities.

The FAR 145 regulations are very clear. In order for a U.S. station to operate “each person who is directly in charge of the maintenance functions of a repair station must be appropriately certified as a mechanic or repairman under part 65...” 14 CFR 145.39. There is simply no such requirement for foreign repair stations.⁷ While the FAA is required to assess the ability of the supervisors to determine their knowledge and expertise, the regulations do not require any set objective test to determine whether foreign mechanics truly are qualified to work on U.S. registered aircraft. In fact, the entire section on personnel requirements for foreign stations is noticeably vague compared with the section that governs domestic stations. For example, for a domestic station, the FAA mandates that “the officials of the station must carefully consider the justifications and abilities of their employees and shall determine the abilities of its uncertified employees performing maintenance operations on the basis of practical tests or employment records.” 14 CFR 145.39. Again, while a foreign

⁷14 CFR 145.75 which governs the personnel requirements for foreign stations states that supervisors and inspectors “do not need airman certificates issued under this chapter and along with the persons performing the work of the station are not considered to be airmen ... with respect to work performed in connection with their employment by the foreign repair station.”

station has some vague requirements to have “enough personnel who are able to perform ... the work” there are no specific mandates like those to which domestic stations must adhere. 14 CFR 145.75.

Drug and Alcohol Testing

Not only do these differences raise some significant concerns, but it is even more troubling to discover that there is a marked difference in drug and alcohol testing requirements. As this Committee is well aware, this nation has made a policy determination, based on a safety and security rationale, that U.S. aviation workers, including certified mechanics, should be subject to random drug and alcohol testing. We fought many of those requirements and to this day believe they are excessive, but everyday U.S. mechanics live by these intrusive rules as part of the price to pay for holding a job in which they are entrusted with the lives and safety of millions of passengers.⁸

Yet, for some reason, we allow foreign stations to be certified without any requirement that the station, the civil aviation authority of that country or the carriers using the station have any program whatsoever to test mechanics for drug or alcohol use. I do not understand why we spend so much time and resources testing U.S. mechanics if we are not going to apply the same requirements to foreign mechanics at FAA-approved stations. What we have today is a complete double-standard and is quite frankly an insult to the working mechanics in this country who play by the rules and simply want their competitors to do the same.

Inspection Challenges

Besides the formal differences between U.S. and foreign stations, there are a number of differences that may not appear anywhere in the regulations, but from a practical standpoint we know they exist, and we know they are problems. The FAA has a statutory responsibility to oversee and supervise the domestic and foreign repair stations it certifies. As more and more carriers use an ever increasing network of contract maintenance facilities, there is a growing concern about the ability of the FAA to properly meet this objective.

This concern was tragically brought to light in the wake of the crash of ValuJet flight 592 on May 11, 1996. The National Transportation Safety Board (NTSB) recently concluded that one of the probable causes of the crash was the “failure of ValuJet to properly oversee its contract maintenance program....” The NTSB also concluded that “contributing to the accident was the failure of the FAA to adequately

⁸I would note that it is a credit to the workers employed in the industry that the positive rate for both mechanics and aviation employees as a whole is extremely low.

⁹It is also significant that the GAO identified three other accidents in 1995 and 1996

monitor ValuJet's heavy maintenance program and responsibilities...."⁹ In fact, the FAA recently fined Sabre Tech \$2.25 million for its actions in relation to the accident.

With the challenges facing the FAA regarding its responsibilities to oversee domestic facilities, it makes no sense to exacerbate this problem by allowing a regulatory scheme that permits the unnecessary certification of facilities that by their very nature need additional oversight. Since 1988, the number of foreign stations have increased by 125 percent and the ability of the FAA inspectors to make real and meaningful inspections of these facilities is being called into question. While there is some confusion about exactly how many foreign inspectors are on the job, we know from first-hand observations that the system that has been established does not allow them to properly ensure that foreign facilities are meeting the minimal standards that are required by the FAA. That is why the union that represents FAA inspectors, the Professional Airway Systems Specialists (PASS), has voiced its strong support for this legislation¹⁰. PASS members are dedicated professionals who want to ensure that we have a safe aviation system and they know what resources and policies are needed to accomplish this goal. Quite frankly, FAR 145, as currently written, is not allowing them to do their jobs in the professional manner that they and the traveling public have a right to expect.

The fact is that FAA inspectors face a number of challenges outside of their control that makes it virtually impossible for them to inspect stations overseas to the same degree as their domestic counterparts. For example, most foreign stations only receive a visit from a U.S. inspector once a year for the purpose of re-certification. As the FAA readily admits, this visit is generally announced well in advance giving the repair station time to prepare and to take steps to ensure that the FAA inspector will only see a station that is in top form.¹¹ There is little guarantee that a foreign station will maintain this high-level of preparedness and there is every opportunity for station resources to be diverted to other facilities or simply not maintained to the high level that the FAA inspector encounters during his or her yearly visit. U.S. stations on the other hand are not subject to yearly re-certification visits the FAA inspectors assigned to that area can and do simply stop by, often unannounced, to ensure that FAA standards are being met.

In fact it is not an exaggeration to say that at some of the busiest facilities in the

that the NTSB has linked to contract repair stations. GAO/RCED-98-21 Page 24. One of these accidents was a result of work performed by a station in Turkey.

¹⁰ Attached at IV is letter from PASS endorsing S. 1089.

¹¹It is significant that according to the FAA, not a single foreign station lost its certification from 1993 to 1997 and during the same time the agency has only issued a total of 7 civil penalties on foreign stations. Attached at V is a letter dated October 8, 1997 that details these findings.

U.S. operated by United, American and other world leaders in maintenance practices, FAA inspectors virtually live on the property. They get to know the stations inside and out and are more likely to spot problems before they result in incidents or accident. This level of coverage simply cannot happen at a foreign station. This does not mean that we should eliminate all foreign stations. We understand and support the need for foreign repair facilities to support our network of international aviation operations. But we must limit these stations to those that are necessary and be sure that the stations we do certify meet the highest FAA regulations.

GAO Report

As this Committee is aware, the General Accounting Office (GAO) has recently issued its report entitled "FAA Oversight of Repair Stations Needs Improvements." The usefulness of this report in relation to foreign stations in general and this legislation is extremely limited. To begin with, of the 10 stations reviewed by the GAO only two were located outside of the United States—one in Frankfurt Germany and the other at the Brussels National Airport in Belgium. Both of these stations are associated with the major national carriers of the countries in which they are located. We readily conceded that our concerns about foreign maintenance are not rooted in the operations of Lufthansa, Sabena or any other similar operator. The reality is that most facilities in the major European countries maintain impeccable records of safety performance and hardly present significant breaches in safety.

It is also obvious that a review of such stations gives little insight into the operations of the vast majority of foreign repair facilities, few of which are connected with major international carriers and many of which are located in underdeveloped countries with aviation systems which the FAA has found to be deficient.¹² Moreover, the GAO report was in no sense a true audit, a matter which is illustrated by the fact that the GAO failed to notice that foreign facilities are generally not subject to unannounced inspections—a procedure which the FAA itself has conceded is crucial to adequate oversight.

The GAO would have found quite a different story if it had visited nations that do not have top notch aviation systems and that employ more lax oversight standards and use low-cost labor to attract their customers. Those are the facilities and nations that jeopardize safety and unfairly target American workers. Those are the stations that under S. 1089 would have to raise their safety standards and would find it more difficult to show that they are necessary for international operations. Simply put, the GAO visited the wrong continent and virtually missed the entire story surrounding the problems with foreign aircraft repair stations.

¹²By the same token, no one would reasonably contend that the performance of domestic stations could be judged exclusively through an examination of American's facility in Tulsa or United's operation in San Francisco.

The GAO report is, however, helpful in understanding the dramatic increase in the use of repair stations and the inherent challenge to aviation safety that this practice presents. Worldwide there are currently 2,800 repair facilities certified by the FAA to work on an aircraft with 10 or more seats. In 1996 alone air carriers spent \$6.5 billion for maintenance and repair; a 23 percent increase over the \$5.3 billion spent just six years earlier. It is clear that with the general increase in air travel, carriers are spending more and more on maintenance and repair and are turning to outsourcing as a means to control costs. In fact the GAO specifically found that:

many air carriers, including smaller air carriers, have used third-party repair stations rather than invest in the additional staff and hardware needed to do the work in-house. Some new carriers entering the passenger or air freight market have chosen to rely heavily and in some cases, almost exclusively on repair stations. GAO/RCED-98-21 Page 16.

Outsourcing is a fact of life and as aviation professionals our members understand that fact but also recognize the safety hazards and threats to job security it poses. Whether you call it outsourcing or contracting out, safety and a level playing field must be preserved. With so many facilities operating all over the world it is more important than ever to limit those facilities located in foreign countries to what is needed and what can be effectively inspected and to ensure that these stations meet the strictest safety standards. Above all, we cannot afford a regulatory system which encourages outsourcing domestically or to foreign countries not only as a way of avoiding investment in training and hardware but also as a way of avoiding safety inspection and regulation.

U.S. Jobs At Risk

With all the differences between foreign stations and domestic stations one fact should be clear U.S. facilities and their employees are placed at a competitive disadvantage based on factors outside of their control. For one thing, a foreign station can save an incredible amount of money on regulatory compliance costs. As I have already discussed, a foreign station does not have to worry about drug and alcohol testing or mechanic certification, and FAA inspection is not as frequent or intrusive. Again, if we are going to require these things at domestic stations, I do not understand why they can be skipped at foreign facilities. By allowing foreign stations to avoid these costs and responsibilities, we are not only placing aviation safety at risk, but we are essentially giving foreign operations a leg-up on U.S. stations. All U.S. mechanics want is a level playing field and FAR 145, as it was amended in 1988, makes that simply impossible.

Some will argue that passage of S. 1089 would cause other nations to retaliate against the U.S. and restrict their aircraft from being repaired in this country. We submit that because of the boom in air commerce occurring in Europe the impact that S. 1089 would have on facilities in those countries is negligible. In fact, these stations

may benefit from this bill as FAA-approved facilities in third world nations would no longer be able to lure business from the numerous top-notch repair stations located in Europe.

While there has been little to no real evidence put forth to support the claim of retaliation, it is an argument that has some appeal and is being used by opponents of S. 1089 to hide from the real problems that unsafe foreign stations present. The fact is that the U.S. aviation market is the largest in the world and other nations and foreign carriers will not and cannot walk away from us simply because our government tightens its safety and oversight rules for FAA-approved repair facilities. We know from talking to our mechanics in the shops that the limited business from overseas has actually decreased since the 1988 rule changes were instituted.

We must also recognize the fact that the cost of hiring a foreign mechanic is, in many instances, a fraction of what it costs in this country. The International Association of Machinists, the Transport Workers Union and the International Brotherhood of Teamsters, who together represent the vast majority of U.S. mechanics, have over the years negotiated solid contracts with their employers ensuring that these are good-paying jobs that form the backbone for many communities throughout the country. Given the crucial role that mechanics play and the responsibilities that they are charged with, the professionalism that these unions have helped instill in our workers is an asset that we must not discard as we attempt to remain the safest aviation system in the world.

But now, these jobs are being placed at risk because FAR 145 allows carriers to ship work to the cheapest operation available anywhere in the world. The wage disparity, combined with the vast difference in regulatory costs, simply means that a foreign competitor may be able to offer a carrier a cheaper alternative. But the question remains are we sacrificing safety and putting U.S. workers in an impossible competitive situation with this regulatory framework? That is exactly what is occurring and we hope this is unacceptable to members of this Committee.

The Solution S. 1089

Fortunately, a solution to these problems, embodied in S. 1089, is before this Committee and can be included as part of a FAA reauthorization bill. Let me quickly give an overview of the bill. First the Specter/Ford bill will repeal the 1988 regulatory changes to FAR 145 and restore FAA policy to the days when foreign facilities that were certified could only be used by U.S. carriers for legitimate international purposes. Let me be clear, in this regard all the exceptions that applied before 1988 will still apply. Some industry interests have made the argument that under this bill a damaged aircraft would have to fly back to the United States to receive repair work. This statement is completely false and I suspect it is intended only to confuse the issues that this bill will truly address.

Second, S. 1089 will level the playing field by requiring all FAA-certified

facilities to meet the same operating and surveillance standards as those imposed on U.S. facilities and their employees. This is simply commonsense. I have already discussed in detail the number of different requirements between U.S. and foreign facilities. These differences present an unacceptable safety risk and place U.S. mechanics at a competitive disadvantage. There have been some suggestions made that this bill also mandates other countries to adopt our labor laws, such as minimum wage and worker safety. The bill is very clear about this. The only standards that must be met are those established by regulations issued by the FAA. Since the agency does not have jurisdiction to issue regulations on these labor-related issues, there is no way the bill could be interpreted in a manner that would create the situation that forces Mexico to pay U.S. minimum wage. Instead, it will require stations to meet the standards set forth by the FAA that pertain directly to aviation safety.

Finally, this legislation will require the revocation of any facility's certification if it "knowingly" uses substandard or bogus parts. Just a few days ago, federal prosecutors in the United States Attorney's office in Miami fined Arrow Air \$5 million for flying planes with improper parts. The cargo carrier, which operates between Miami and the Caribbean, Central and South America, was found to have stripped parts from aircraft not deemed airworthy by the FAA and used outside the U.S., and transferred the parts to other aircraft and then falsified records.¹³

With foreign stations using the relaxed FAR 145 regulations to open up shop all over the world and the inherent challenges that FAA's inspectors face, the possibility that a foreign facility can utilize fraudulent parts without detection only increases. A partial solution to this problem is to limit the number of foreign stations that can get certified to those that are genuinely needed and to ensure that when a station is discovered using substandard or bogus parts its certification and its right to do business will be immediately revoked.

Conclusion

We realize and accept that some foreign stations are a necessary component of our aviation network and that some of the problems I have articulated may continue to exist even with the passage of this bill. But the fact is that S. 1089 will make a significant difference in promoting aviation safety and protecting U.S. jobs. It will limit the number of stations to those that are truly needed and will ensure that all facilities meet the requirements established by the FAA. In addition, it will send a strong message to those who would traffic bogus parts that their actions are unacceptable to the FAA and will result in a severe penalty.

If we are serious about making aviation safety a number one priority, then we cannot continue to bless a system that actually encourages the use of foreign facilities that do not meet the highest safety standards. It is not fair to the traveling public, nor

¹³Attached at VI are articles that detail this action.

is it fair to the thousands of highly-trained U.S. mechanics. With the FAA bill before this Committee, you have a unique opportunity to finally address this problem. I look forward to working with you towards this goal and I thank you for providing us this opportunity to express our views.